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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
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9 EDUARDO CAMACHO,

10 Petitioner,

11 vs.

12 E.K. MCDANIEL, *et al.*,

13 Respondents.
14

Case No. 3:11-cv-00318-LRH-WGC

ORDER

15 This action is a petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254, filed by
16 a Nevada state prisoner. On February 4, 2015, this court granted petitioner's motion for counsel and
17 appointed the Federal Public Defender to represent petitioner in this action (#34). On March 6, 2015,
18 Thomas Lee of the Federal Public Defender's Office appeared on behalf of petitioner (#36). The court
19 now sets a schedule for further proceedings in this action.

20 **IT IS THEREFORE ORDERED** that counsel for petitioner shall meet with petitioner as soon
21 as reasonably possible, if counsel has not already done so, to: (a) review the procedures applicable in
22 cases under 28 U.S.C. § 2254; (b) discuss and explore with petitioner, as fully as possible, the potential
23 grounds for habeas corpus relief in petitioner's case; and (c) advise petitioner that all possible grounds
24 for habeas corpus relief must be raised at this time in this action and that the failure to do so will likely
25 result in any omitted grounds being barred from future review.

26 **IT IS FURTHER ORDERED** that petitioner shall have **ninety (90) days** from the date of entry
27 of this order, to **FILE AND SERVE** on respondents an amended petition for writ of habeas corpus,
28 which shall include all known grounds for relief (both exhausted and unexhausted).

1 **IT IS FURTHER ORDERED** that respondents shall have **thirty (30) days** after service of an
2 amended petition within which to answer, or otherwise respond to, the amended petition. If petitioner
3 does not file an amended petition, respondents shall have **thirty (30) days** from the date on which the
4 amended petition is due within which to answer, or otherwise respond to, petitioner's original petition.

5 **IT IS FURTHER ORDERED** that respondents shall file a response to the petition, including
6 potentially by motion to dismiss, within **ninety (90) days** of service of the petition, with any requests
7 for relief by petitioner by motion otherwise being subject to the normal briefing schedule under the local
8 rules. **Any response filed shall comply with the remaining provisions below, which are entered**
9 **pursuant to Habeas Rule 4.**

10 **IT IS FURTHER ORDERED** that any procedural defenses raised by respondents in this case
11 shall be raised together in a single consolidated motion to dismiss. In other words, the court does not
12 wish to address any procedural defenses raised herein either in *seriatum* fashion in multiple successive
13 motions to dismiss or embedded in the answer. Procedural defenses omitted from such motion to
14 dismiss will be subject to potential waiver. Respondents shall not file a response to any amended
15 petition in this case that consolidates their procedural defenses, if any, with their response on the merits,
16 except pursuant to 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If
17 respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they shall do so within
18 the single motion to dismiss **not** in the answer; and (b) they shall specifically direct their argument to
19 the standard for dismissal under § 2254(b)(2) set forth in *Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th
20 Cir. 2005). In short, no procedural defenses, including exhaustion, shall be included with the merits
21 in an answer. All procedural defenses, including exhaustion, instead must be raised by motion to
22 dismiss.

23 **IT IS FURTHER ORDERED** that, in any answer filed on the merits, respondents shall
24 specifically cite to and address the applicable state court written decision and state court record
25 materials, if any, regarding each claim within the response as to that claim.

26 **IT IS FURTHER ORDERED** that petitioner shall have **thirty (30) days** from service of the
27 answer, motion to dismiss, or other response to file a reply or opposition, with any other requests for
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1 relief by respondents by motion otherwise being subject to the normal briefing schedule under the local
2 rules.

3 **IT IS FURTHER ORDERED** that any additional state court record exhibits filed herein by
4 either petitioner or respondents shall be filed with a separate index of exhibits identifying the exhibits
5 by number. The CM/ECF attachments that are filed further shall be identified by the number or
6 numbers of the exhibits in the attachment. The hard copy of any additional state court record exhibits
7 shall be forwarded – for this case – to the staff attorneys in **Reno**.

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9 DATED this 12th day of March, 2015.

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11 LARRY R. HICKS
12 UNITED STATES DISTRICT JUDGE
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